

INTERNAL REVENUE SERVICE

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[REDACTED]

August 9, 2001

Dear [REDACTED]

This responds to your letter of July 20, 2001, requesting a determination letter on whether charter boat operators engaged in for-hire sport fishing activities can claim a credit or refund of the tax imposed on the diesel fuel or gasoline used in their vessels while so engaged.

A determination letter is issued by a director. A letter ruling is a written statement issued to a particular taxpayer by the national office involving the application of the tax laws to a taxpayer's specific set of facts. The taxpayer to whom the letter ruling is issued, and only that taxpayer, may rely on the letter ruling. The IRS does not issue letter rulings to business, trade, or industrial associations or similar groups concerning the application of the tax laws to members of the group. If a particular taxpayer that is a member of your association would like to request a letter ruling involving the application of the tax laws to their specific set of facts, the instructions are set forth in Revenue Procedure 2001-1 I.R.B. 1 (copy enclosed). In the meantime, we hope the following general information will be useful to you.

Under § 6427(l)(2), use in a motorboat is a nontaxable use of diesel fuel. Therefore, boat operators can use dyed diesel fuel on which no tax has been imposed or they can use undyed, taxed, diesel fuel and claim a credit or refund of the tax.

With regard to gasoline, § 6421(a) provides that a credit or refund is available to the ultimate purchaser of gasoline used in an off-highway business use. Section 6421(e)(2)(B) provides that "off-highway business use" does not include any use in a motorboat with the exception of any use in a vessel employed in the fisheries or the whaling business.

Rev. Rul. 65-134, 1965-1 C.B. 492, holds vessels are employed in the fisheries or

whaling business when used (1) exclusively for the purpose of catching shrimp and other types of aquatic life for sale commercially as bait, or (2) on specific trips exclusively for catching fish all of which are sold commercially. The Congress referenced that holding to describe the only use of gasoline in a motorboat for which a credit or refund would be available. See S. Rep. No. 95-1324, at 50 (1978).

In Rev. Rul. 78-312, 1978-2 C.B. 266, the IRS held that the term "vessels employed in the fisheries" includes only watercraft used in taking, catching, processing, or transporting fish, shellfish, or other aquatic life for commercial purposes, such as selling or processing the catch, on a specific trip basis. The ruling holds that the term does not include watercraft used on a specific trip for both sport fishing and commercial fishing.

There has been no other guidance issued by the IRS on the definition of vessels employed in the fisheries or whaling business.

If you have any questions or require further assistance, please feel free to contact my office at the number listed above.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:

Ruth Hoffman
Senior Technician Reviewer, Branch 8

Enclosure